

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL YOUNG,

Plaintiff,

vs.

STATE OF NEVADA,

Defendant.

Case No. 2:16-cv-00562-JAD-GWF

ORDER

Application to Proceed *in Forma Pauperis* (ECF No. 1) and Screening of Complaint (ECF No. 1-1)

This matter is before the Court on Plaintiff's Application to Proceed *in Forma Pauperis* (ECF No. 1), filed on March 14, 2016. Also before the Court are Plaintiff's Motion to be Removed from Calendar (ECF No. 2) and Motion for Copy of Records (ECF No. 3), filed on April 11, 2016.

DISCUSSION

I. Application to Proceed In Forma Pauperis

Plaintiff filed this instant action and attached a financial affidavit to his application and complaint as required by 28 U.S.C. § 1915(a). Reviewing Plaintiff's financial affidavit pursuant to 28 U.S.C. § 1915, the Court finds that Plaintiff is unable to pre-pay the filing fee. As a result, Plaintiff's request to proceed *in forma pauperis* in federal court is granted.

II. Screening the Complaint

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant/third party plaintiff who is immune from such relief. 28 U.S.C. § 1915(e)(2).

Under Rule 8(a)(2), a pleading must contain a "short and plain statement of the claim

1 showing that the pleader is entitled to relief.” “[T]he pleading standard Rule 8 announces does not
2 require detailed factual allegations, but it demands more than an unadorned, the-defendant-
3 unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949
4 (2009) citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007). Mere
5 “labels or conclusions” or a “formulaic recitation of the elements of a cause of action” will not
6 suffice. *Id.* Neither will naked assertions that are devoid of further factual enhancement. *Id.*

7 Plaintiff’s one-page complaint provides the Court with no factual basis for his claims
8 whatsoever. Plaintiff appears to be requesting a copy of his probation file from the Nevada
9 probation/parole department through the Freedom of Information Act. *Complaint* (ECF No. 1-1).
10 However, Plaintiff fails to give the Court any other information. This is simply inadequate and the
11 Court cannot conduct a screening of Plaintiff’s complaint. Therefore, the Court will dismiss
12 Plaintiff’s complaint with leave to amend. Plaintiff is advised that he must provide the court with a
13 proper factual basis for his claims in his amended complaint.

14 If Plaintiff elects to proceed in this action by filing an amended complaint, he is informed that
15 the court cannot refer to a prior pleading in order to make his amended complaint complete. Local
16 Rule 15-1 requires that an amended complaint be complete in itself without reference to any prior
17 pleading. This is because, as a general rule, an amended complaint supersedes the original complaint.
18 *See Valdez-Lopez v. Chertoff*, 656 F.3d 851, 857 (9th Cir. 2011); *see Loux v. Rhay*, 375 F.2d 55, 57
19 (9th Cir.1967). Once Plaintiff files an amended complaint, the original pleading no longer serves any
20 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim and
21 the involvement of each defendant must be sufficiently alleged. Accordingly,

22 **IT IS HEREBY ORDERED** that Plaintiff’s Application to Proceed *in Forma Pauperis* is
23 **granted**. Plaintiff shall not be required to pre-pay the full filing fee of four hundred dollars
24 (\$400.00).

25 **IT IS FURTHER ORDERED** that Plaintiff is permitted to maintain this action to conclusion
26 without the necessity of prepayment of any additional fees or costs or the giving of
27 security therefor. This Order granting leave to proceed *in forma pauperis* shall not extend to the
28 issuance of subpoenas at government expense.

3 **IT IS FURTHER ORDERED** that Plaintiff's Complaint be **dismissed** without prejudice
4 with leave to amend. Plaintiff shall have until **November 4, 2016** to file an amended complaint
5 correcting the noted deficiencies.

6 **IT IS FURTHER ORDERED** that Plaintiff's Motion to be Removed from Calendar (ECF
7 No. 2) and Motion for Copy of Records (ECF No. 3) are **denied**.

8 || DATED this 3rd day of October, 2016.

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GEORGE FOLEY, JR.
United States Magistrate Judge